



INTERNATIONAL
ECONOMIC DEVELOPMENT
COUNCIL

*The Power of
Knowledge and Leadership*

Eminent Domain Resource Kit

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Inside the Kit:

I. Current Federal Legislative Activity.....3

II. IEDC Position on Eminent Domain.....4

IV. Eminent Domain Guiding Principles6

V. Eminent Domain: Myth Vs. Reality.....7

VI. IEDC Case Studies 10

1. Downtown Brea Redevelopment, Brea, California..... 11

2. Fort Trumbull Area, New London, Connecticut (Kelo v. City of New London) 16

3. Nissan Motor Company, Canton, Mississippi 20

4. Target, Topeka, Kansas 23

5. Best Buy, Richfield, Minnesota 26

6. Belmar, Lakewood, Colorado 28

7. Urban Retail, San Diego and Los Angeles, California 30

I. Current Federal Legislative Activity

The House voted overwhelmingly (376-38) to approve a bill (HR 4128) that bars state and local governments that exercise eminent domain for economic development purposes from receiving federal development funds. The bill is called the "Private Property Rights Protection Act of 2005." It also would bar the federal government from exercising eminent domain in the name of economic development and punishes governments that violate the law by denying them federal money for economic development projects for two years.

The bill defines "economic development" as private, for-profit projects or those intended to increase tax revenue, the tax base or jobs.

The Rules Committee allowed for 11 amendments to be offered, including one by Michael Turner (R-OH), that would have allowed governments to take land for reasons he described as related to "threats to health and safety," such as dilapidation or overcrowding. Sensenbrenner complained that Turner's terms were poorly defined. Turner's amendment failed on a vote of 56-357.

The next step for this bill will be the passage of a Senate version of the bill. Senator John Cornyn (R-TX) has introduced similar legislation (S. 1313). The bill currently has 31 cosponsors, including Senator Boxer. Hearings have been held on the bill, and there are behind the scenes discussions, but no legislative action has been scheduled.

In another blow to our profession, the final Transportation Treasury Appropriations Bill (HR 3058) approved by the House last week contains a provision prohibiting the use of federal funds for projects that use eminent domain for economic development purposes. The language allows exceptions for brownfields and projects that remove "an immediate threat to public health and safety." It is thought that the second exception is a softened definition of the more commonly understood term blight, but how the language will be interpreted is unclear.

The language is contained in the 'General Provisions' section of the bill, which means the language applies to all federal agencies funded by the bill: Transportation, Treasury, Housing and Urban Development, and the Judiciary. The bill funds these agencies for one fiscal year, and it is thought that the prohibition will only last as long as the life of the bill.

II. IEDC Position on Eminent Domain

In Support of the Supreme Court Opinion

- The 5-4 decision in *Kelo v. New London* affirms that eminent domain is an important tool for local governments in the redevelopment and revitalization of economically distressed areas.
- The court stated in its opinion that **the pursuit of economic development is a "public use"** within the meaning of the Fifth Amendment's Takings Clause.

Existing Safeguards Prevent Abuse

- Eminent domain, like any government power, **must be used prudently**; there are many built in checks on its abuse.
- The Fifth Amendment requires that anyone whose property is taken for a public use be **justly compensated**, and in practice, most takings are compensated generously.

Jobs and Development

- Judicious use of eminent domain is **critical** to the economic growth and development of cities and towns throughout the country.
- Assembling land for redevelopment helps to revitalize local economies, create much-needed jobs, and generate revenues that enable cities to provide essential services.
- When used prudently and in the sunshine of public scrutiny, eminent domain helps achieve a **greater public good that benefits the entire community**.
- If eminent domain for economic development is prohibited, one person could veto the redevelopment of an **entire distressed community**. This would have the practical effect of making such projects **virtually impossible**.
- Unduly constraining eminent domain would thwart job creation by eliminating an entire category of projects from the redevelopment toolbox of local officials.

The Important Role of Local Officials

- Eminent domain is **never the first option pursued** in acquiring land for economic development purposes.
- The Supreme Court ruling reaffirms that the power of eminent domain is in the hands of local elected officials. The court majority stated that **local officials know best** in deciding whether a development project will benefit the community.
- The Court appreciated New London's long engagement in an open and comprehensive planning process.
- Public officials **must still comply** with existing rules protecting individual property owners, and they are **accountable to citizens and voters**.

The Future of Eminent Domain

- The court emphasized that their decision in no way precludes the rights of states to place **further restrictions** on eminent domain and to more narrowly define public use. The court **leaves these rights to local officials** and citizens for public debate.
- Should Congress act further to prohibit the use of eminent domain for economic development purposes, the economies of many Congressional districts will suffer because no municipality in America could use eminent domain to carry out an economic development project.

IV. Eminent Domain Guiding Principles

1. When a public agency engages in land assembly, the process should be open to community stakeholders such as residents and local businesses.
2. Eminent domain should be employed as a last resort in the land assembly process and only when a property owner, after attempted negotiations, refuses to sell at a fair market value. To protect landowners, independent appraisals should be conducted.
3. All reasonable efforts should be made to avoid taking occupied residences and active businesses. A community must carefully weigh the benefits of redevelopment against the hardship associated with displacement.
4. When eminent domain is used in the taking of occupied property, relocation costs should be covered for the property owner. This may also include providing assistance to homeowners in finding a new home.
5. Before initiating the eminent domain process, municipalities should carefully review the legal parameters of the process as provided in their local charter. The process should be fully documented and completely transparent.
6. States that only allow the use of eminent domain for blighted land and property need to establish a clear definition of blight. This will reduce ambiguity for municipalities initiating the eminent domain process. Municipalities should establish a standardized approach in land assembly and eminent domain to provide consistent expectations amongst stakeholders.

V. Eminent Domain: Myth Vs. Reality

Myth 1: Eminent domain is a quick and low cost means of acquiring land.

Reality: Eminent domain is more expensive and time consuming than the traditional method of land acquisition through negotiated purchase. Land acquired through eminent domain is often acquired at a price above fair market value. Unfortunately, the related legal fees frequently nullify any sales price premium benefits for the landowner. The acquiring agency is often affected even more by the premium price and legal costs associated with eminent domain.

Myth 2: Eminent domain is typically used as the first option in the land assembly process.

Reality: The eminent domain process is time consuming and expensive; it is therefore the last resort pursued during a land assembly process. Many local authorities rarely exercise their power of eminent domain.

Myth 3: State and local authorities promote urban redevelopment for the sole purpose of increasing the tax base.

Reality: Eminent domain is an important tool in revitalizing declining areas. Redevelopment projects remove blight, create jobs, improve public safety, and increase private investment in an area. Tax base growth is only one potential benefit.

Myth 4: The use of eminent domain violates private property rights.

Reality: Local and state authorities have the constitutional power to acquire property through eminent domain on the condition of just compensation.

Myth 5: Eminent domain is a government tool used to strip individuals of their private property rights.

Reality: Each state legislates its use of eminent domain. A public purpose or benefit generally needs to be clearly demonstrated. Authorities that abuse this privilege risk creating volatile political situations. Few government or elected officials are willing to risk their position and political stability in pursuit of a project overwhelmingly opposed by the community.

Myth 6: Local authorities and private developers undertake land assembly and eminent domain without involving the community.

Reality: Most local governments or redevelopment agencies incorporate community participation early on in a redevelopment initiative. There are many cases that demonstrate successful collaboration between community, private sector, and government representatives in the revitalization of distressed areas.

Myth 7: The government employs eminent domain to take property from one owner and give it to another owner that is financially or politically stronger. State and local governments use eminent domain as part of corporate incentive packages that benefit specific businesses.

Reality: Eminent domain is part of the land assembly process for redevelopment with the intent to remove blight and/or create jobs and/or create housing. The public sector intervenes so that the private sector can bring in much needed investment in a distressed area. Government agencies are not in the private real estate development business, therefore, the assembled land is typically leased or sold to the private sector for redevelopment. Often the prices and terms of the deals are very favorable because 1) the location and characteristics of the property are otherwise very unfavorable, and/or 2) the private party can create or retain much-needed jobs.

Myth 8: The flexible definition of blight facilitates the state's power in repossessing land.

Reality: Each state has its own definition of blight. Some have a strict test for blight, requiring physical or economic decline. Others have a more flexible definition. A few states do not have a blight requirement as a condition of eminent domain, but require that the project lead to job creation. There have been some highly publicized cases of local governments who have abused the blight designation to justify government repossession of land. These negative cases highlight the need for states to clarify their intentions and incorporate community involvement in defining eminent domain regulations.

Myth 9: The public money spent on assembling land for private use is tax money that will forever be lost to the community.

Reality: Initial public money invested is recaptured through increased tax revenue generated by the increase in property values and retail sales. In a well-planned project, the return on investment usually exceeds the initial cost. Furthermore, the benefits of redevelopment go beyond tax recovery to include job creation and area revitalization.

Myth 10: Land assembly and condemnation activities position a municipality as a real estate broker and developer in what has traditionally been private land deals. The free market can and will allow for redevelopment of older areas without any government intervention.

Reality: In many cases, a large, blighted area is comprised of numerous small properties. Private developers are reluctant to spend the time and money necessary to acquire each property with no assurance that they will ever assemble a large enough site to develop. Without land assembly assistance in urban areas, developers are likely to choose large tracts of undeveloped land on the suburban/city fringe. Such actions promote sprawl. Urban land assembly curtails sprawl and encourages smart growth.

Myth 11: Eminent Domain is an unnecessary tool for economic development.

Reality: Eminent domain is an important tool for economic development. Eminent domain gives communities a last resort option to help ensure that significant development opportunities are not hindered when reluctant landowners refuse to negotiate fair sale of their property. Without this valuable tool, local economic development professionals would not be able to sufficiently assemble land for beneficial redevelopment and public gain.

VI. IEDC Case Studies

1. *Downtown Brea Redevelopment*, Brea, California
2. *Fort Trumbull Area*, New London, Connecticut (Kelo v. City of New London)
3. *Nissan Motor Company*, Canton, Mississippi
4. *Target*, Topeka, Kansas
5. *Best Buy*, Richfield, Minnesota
6. *Belmar*, Lakewood, Colorado
7. *Urban Retail*, San Diego and Los Angeles, California

1. Downtown Brea Redevelopment, *Brea, California*

With a population of approximately 40,000, Brea is one of the oldest cities in Orange County, California. Around 30 miles southeast of downtown Los Angeles, Brea followed a typical pattern of suburban development as it grew over the past thirty to forty years. As retail, residents, and businesses located at the outskirts of the city, Brea's inner core slowly deteriorated. Redevelopment projects and business attraction efforts in the 1970s and 1980s, such as the construction of Brea Mall in 1974, helped rejuvenate the city's economy, but further contributed to the abandonment of its downtown.



Source: Planetizen November 10, 2003

By 1985, Brea's downtown was characterized by boarded-up shops, abandoned buildings, vacant lots – some with contamination, sub-standard housing, and overall blight. Without an active downtown, the city no longer had an economic or community center. But, a twenty-year redevelopment effort helped turn Brea's downtown around. Today, with over \$150 million in public and private investment, downtown Brea is a vibrant neighborhood and commercial center with 400,000 square feet of retail and restaurants, two movie theatres, over 200 housing units, 2,146 free parking spaces, including 1,750 in two parking garages, and extensive public improvements.

Redevelopment Process

The Brea Redevelopment Agency (BRA) began acquiring blighted properties and assembling land for redevelopment downtown in 1985. Recognizing that any redevelopment effort would require community support and a clear plan, the city and the BRA embarked on a public visioning process in 1989. The city sponsored a charette that drew more than 100 community members, business owners, urban planners, architects, traffic engineers, and other key city staff. The idea of a mixed-use district of homes, businesses, and entertainment emerged - an area that would serve as a community-gathering place, encourage round-the-clock activity, offer a variety of housing options, and provide public space. This vision guided the creation of the Downtown Brea Redevelopment Plan.

To meet this vision for a vibrant downtown district, the BRA needed to assemble large tracts of land for redevelopment, which involved buying abandoned and decaying properties, but also some active businesses and occupied residences. In conjunction with the planning process in 1989, the city approved the use of eminent domain for a period of six years for the downtown plan area. The BRA negotiated acquisition of hundreds of blighted residential parcels and 100 businesses.

As part of the process, BRA offered up to 10% above appraised value, provided business reestablishment costs, and reimbursed for any loss of business goodwill (loss of customers due to a move) as required under California redevelopment law. In total, 250 homes and 41 businesses were relocated. Five businesses sued as a coalition contending that the BRA's relocation plans were insufficient. One business received additional relocation benefits.

The power of eminent domain served as an important tool for the BRA in preparing the downtown for redevelopment. In negotiations, the threat of eminent domain prevented the few property owners that would ask for selling prices significantly above fair market value from stalling the process. In total, eminent domain was only used for two of the nearly 400 properties it acquired within the downtown area. Among the sites that the BRA acquired, more than 200 were contaminated with oil, gas, or septic uses.

Under California law, condemnation authority can last for 12 years, after which it must be reassessed. After the six year eminent domain authority ended in 1997, the BRA requested



Birch Street, Downtown Brea

Source: CIM Group, <http://www.cimgroup.com>

that it be reinstated for an additional 4 years to conclude negotiations with 3 remaining property owners. Without this measure, the BRA would not have been able to negotiate with the property owners. The three properties - a sewing shop, a contractor's yard, and a deteriorating house - would have disrupted the redevelopment effort.

The downtown redevelopment effort was an ongoing participatory process. In 1997, the city requested further

community input through an "Idea Fair." More than 200 people participated. During this charette process, the community re-confirmed its vision for a pedestrian-oriented, vibrant, mixed-use downtown district that would serve as a community focal point.

Downtown Development

Downtown Brea is a neighborhood district as well as a regional shopping and

In Downtown Brea:

- 400, 000 square feet of retail and restaurants
- 200 housing units
- 2,146 parking spaces
- 2 parking garages
- 2 movie theatres (22 screens)

entertainment destination. The area also functions as focal point for community events and activities. There is a farmer's market every Sunday, and scheduled events throughout the year such as the Orange County Fine Arts Festival, the Cruisin' Brea Classics Car Show & Music Festival, and the Brea Jazz Festival Concert Series.

Brea's downtown offers a variety of housing options, including affordable housing for low to moderate-income households. Currently, the downtown area has 40 town homes, 62 one-bedroom apartments located above retail, and 98 single-family homes on small lots.

The residential units are integrated with commercial and retail uses. The single-family development called Ash Street Cottages was built as a downtown neighborhood. A grocery store, video rental store, cleaners, coffee shop, and entertainment are all within easy walking distance from the homes. The Birch Street Lofts, built above retail, were developed as part of the around-the-clock part of the district. Of the 62 units, 33 were set aside for low-to-moderate income families.



Source: <http://www.tndwest.com/birchstreet.html>

Brea home prices averaged \$651,000 to \$675,000 in October of 2006. Loft apartment rentals on the Birch Street Promenade were between \$1,100 and \$1,400 a month, while some houses in the Ash Street Cottages neighborhood were over \$700,000.



Source: CIM Group, <http://www.cimgroup.com>

Community Participation

BRA attributes much of the redevelopment success in downtown to the high level of public participation in the planning process. In 1989, together with substantial community input, BRA established a common vision for the city's downtown. That vision served as the basis for all planning efforts over the next 15 years. The established vision statements were well documented and consistently referred to throughout the redevelopment process. They were eventually integrated into the Brea General Plan.

The extensive public participation at the outset of the redevelopment process provided a strong foundation of community acceptance. This was particularly helpful when BRA had to face opposition about its proposed changes to the urban landscape and its use of eminent domain. They could clearly point to a community generated and community accepted plan. The BRA process also raised the level of community awareness and knowledge about city redevelopment projects. Thanks to the educational component of the participatory process, local residents were well-schooled in the complexities of redevelopment and a few later became elected officials themselves.

Funding and Economic Indicators

Brea Downtown Project Area ¹				
	1983	2005	\$ Increase	% Increase
Assessed Value	\$169,449,704	\$ 852,669,481	\$683,219,777	403%
Property Tax Revenue	\$ 1,785,999	\$ 9,384,436	\$ 7,598,437	425%

The BRA invested over \$50 million in Brea's new downtown. This included funding for property acquisition, relocation expenses, infrastructure improvements, two public parking structures, tenant incentives, affordable housing incentives, marketing, and public relations and staff costs. Private investment in Brea's downtown comes to over \$100 million.

Brea's Downtown redevelopment increased the city's tax base. From 1983 to 2005, the downtown area increased in value by \$683 million and annual property tax revenues increased by \$7.6 million.

In Sum

The downtown redevelopment effort was not without resistance. Some long time residents felt that downtown business owners were unfairly displaced. Others felt that the new development diminished the small-town charm of the city. The city and the BRA recognized the difficulties of relocation for property owners, but it also knew that it could not actualize the downtown vision created by the community without assembling land for redevelopment. The success of the downtown district as a walkable residential neighborhood and commercial center has already sparked interest in redevelopment of adjacent areas. In 2006, Sunset Magazine featured Brea as one of the "Best Place to Live" in the Western U.S., as a result of its newly revitalized downtown.

Sources

Interviews

Connie Sandifer; City of Brea, Attorney
Eric Nicoll; City of Brea, Economic Development Director
Lee Squire; City of Brea, Financial Manager
Scott Riordan; City of Brea, Economic Development Manager
Susan Lee; City of Brea, Economic Development Department

Websites

Downtown Brea www.breadowntown.com
City of Brea www.ci.brea.ca
CIM Group www.cimgroup.com

¹ Assessed values are provided by the Orange County Assessor's Office. The estimated property taxes for fiscal year 2005-06 are provided by Orange County Auditor-Controller's Office.

Articles and Reports

Cheek, Lawrence. "The Best Places to Live" *Sunset Magazine*, February 2006

Cherry, Nathan. "Restarting the Heart," *Urban Land*. October 2000.

Jaffe, Matthew. "Best Bounce Back Burb" *Sunset Magazine*, February 2006

Rutherford, Paris. "Acting Proactively," *Urban Land*. July 2005.

Schreiber, Kenneth, Gary Binger & Dennis Church. *Higher-Density Plans: Tools for Community Engagement*. Mineta Transportation Institute College of Business, San José State University, August 2004

2. Fort Trumbull Area, New London, Connecticut (Kelo v. City of New London)²

In October 2000, the City of New London, CT, voted to use eminent domain to acquire 15 parcels of land as part of a redevelopment plan for the Fort Trumbull area. Affected homeowners challenged the condemnation proceedings, but the Connecticut Supreme Court ruled in favor of the city. In September 2004, the homeowners successfully petitioned the U.S. Supreme Court to review the limits on the taking of private land under the public use requirement for the purpose of economic development. On June 23, 2005 the Supreme Court ruled in favor of the City of New London, acknowledging eminent domain as an important tool for the revitalization of declining areas.

The history of the U.S. Supreme Court case, *Kelo v. City of New London*, is rooted in the economic conditions that plagued the City of New London, CT in the late 1990s. With the loss of a major employer³, a lack of significant property tax revenues (54% of the land area in the city was exempt), and unemployment rates well above both county and state levels, the city was in need of an economic development miracle. In 1998, the Connecticut State Bond Commission authorized bonds to support planning activities (including property acquisition) in the Fort Trumbull area, with the goal of creating a state park. In February 1998, Pfizer Inc. announced that it was developing a global research facility on the New London Mills site, adjacent to the Fort Trumbull area. The following April, the New London City Council and the New London Development Corporation (NLDC) began a public participation process (largely a series of informal neighborhood meetings) designed to help create a development plan for the Fort Trumbull area.

The resulting Fort Trumbull Municipal Development Plan consisted of approximately 90 acres located on the Thames River, adjacent to the proposed Fort Trumbull State Park and the \$300M, 790,000-square-foot Pfizer Global Research and Development⁴ facility (which opened June 2001). A composite of the best features from six alternative development plans⁵, the Fort Trumbull Municipal Development plan included approximately 115 land parcels comprising both residential and commercial properties (some vacant); it also covered the site of the former 32-acre U.S. Naval Undersea Warfare Center and the regional water pollution control facility. In prefacing the plan, NLDC stated that its goals were to create development that would complement the planned Pfizer facility, create

² Principal sources: New London Development Corporation (www.nldc.org), *Susette Kelo et al. v. City of New London et al.* (SC 16742)

³ The 1996 closure of the U.S. Naval Undersea Warfare Center transferred more than 1000 positions to Newport, RI.

⁴ Currently more than 2,000 employees working in the Pfizer facility, providing almost \$12.6 million annually in new taxes to New London and more than \$25 million every year in new state taxes.

⁵ The six alternate plans considered by NLDC included 1) no action; 2) recreation & cultural facilities to complement the state park; 3) residential construction with minor retail/office space; 4) business campus supported by a hotel/conference center; and 5 & 6) two mixed use plans with different arrangements.

jobs, increase tax revenues, encourage public access to and use of the waterfront, and eventually “build momentum” for the revitalization of the rest of the city, including its downtown.

The plan was expected to generate between: (1) 518 and 867 construction jobs; (2) 718 and 1362 direct jobs; and (3) 500 and 940 indirect jobs. The composite parcels were expected to generate between \$680,544 and \$1,249,843 in property tax revenues for the City. The plan was approved by the City Council in January 2000; at the same time, the NLDC was authorized to acquire the properties within the development area using eminent domain (if necessary). In October 2000, the NDLC voted to use eminent domain to acquire the remaining 15 properties in the area from the seven owners who would not sell voluntarily. In November, the NLDC filed condemnation proceedings; the following month the homeowners challenged the action. The NLDC brought all condemnations under a law governing Municipal Development Projects, instead of under Connecticut’s urban renewal law that permits the use of eminent domain to clear slums or blighted areas. The area could have been declared blighted, but because the project was primarily state funded, a financial decision was made that the appropriate statutes to be used were economic development-related.

Fort Trumbull Municipal Development Plan “Parcels”

Parcel	Project Description
1	Waterfront hotel & conference center w/ marinas & public waterfront walkway
2	80 new residences & U.S. Coast Guard museum ⁶
3*	90,000 square feet of high technology R&D office space & parking; Retains existing <i>Italian Dramatic Club</i> (social organization w/ its own building)
4	A* “Park support” – undefined (possibly retail, parking, marina training center)
	B Renovated marina (will accommodate recreational boating & commercial fishing)
5	140,000 square feet of office space, parking & retail space
6	Development of water-dependent commercial uses
7	Additional office space or R&D use

*Four properties owned by three of the homeowners are located on parcel 3; eleven properties owned by four of the homeowners are located on parcel 4A. In total, the homeowners’ properties constitute 1.54 acres.

After a seven-day bench trial in 2001, the New London Superior Court granted permanent injunctive relief and dismissed the eminent domain actions against the four homeowners who live on Parcel 4A, while upholding the takings of the Parcel 3 properties. With regards to Parcel 4A, the court ruled that the city had not demonstrated reasonable necessity for the condemnations and that the condemnations lack assurances of future public use (because the city had not identified the use). Both the homeowners and the City of New London appealed. Regarding the properties on Parcel 3, the homeowners were allowed to remain in their homes while the case was resolved in appellate court

⁶ U.S. Coast Guard Museum will be a \$40M, 50,000 square feet facility

(although the Connecticut Supreme Court transferred the appeal/cross-appeal to itself). On March 9, 2004, a four-justice majority affirmed in part and reversed in part, holding that *none* of the challenged condemnations violated the U.S. or Connecticut Constitutions, and the “intent and motives” of the government in satisfying the public use requirement were valid.

In September 2004, the homeowners successfully petitioned the U.S. Supreme Court to review the primary issue in the case: the limits under the public use requirement when the government takes land for private economic development. The argument made by the homeowners was that the taking of land from one private owner to another, even with fair compensation, violates the Fifth Amendment to the Constitution, which allows the taking of property by government only for “public use.” On June 23, 2005, The Supreme Court ruled in favor of the City of New London. The court held that New London’s redevelopment plan “unquestionably serves a public purpose” and therefore satisfies the “public use” requirement of the Fifth Amendment. The Supreme Court upheld the right of local governments to use the power of eminent domain for economic development purposes.

Case Timeline⁷

Filed Lawsuit	December 20, 2000
Court Filed	Superior Court of New London
Decisions	March 13, 2002: Superior Court of New London dismisses 11 out of 15 eminent domain actions. Both sides appeal.
	March 3, 2004: Connecticut Supreme Court rules against <i>all</i> property owners by 4-3 vote.
	April 20, 2004: Connecticut Supreme Court declines to reconsider ruling; issues stay pending appeal to the U.S. Supreme Court.
Court Filed	U.S. Supreme Court: petition granted in September 2004
Decisions	June 23, 2005: The U.S. Supreme Court rules in favor of the City of New London by 5-4 vote, upholding the right of local governments to use the power of eminent domain for economic development purposes.

The first phase of the plan (comprising the uncontested parcels) was completed in mid-2001, featuring \$12 million of infrastructure work including two major roundabouts, one of which forms the entryway to the Pfizer Global Research & Development Facility. In addition to street improvements, infrastructure reconstruction in the Fort Trumbull area includes new water, sewer and underground utility lines; new sidewalks and streetlights; and an extensive landscaping program with new tree plantings to screen out the upgraded regional wastewater treatment facility. The City of New London and the State of Connecticut have made significant improvements to the wastewater treatment facility itself, significantly reducing odors and improving the appearance of the plant through site clean-up, fencing and new landscaping. Additionally, a river walk is being constructed along the entire length of the area’s waterfront connecting to a walkway system that

⁷ Institute for Justice (www.ij.org)

continues through the downtown and up to the northern edge of the city. The landscaped walkway will be able to accommodate both pedestrian and bicycle traffic. The second phase of the plan is largely completed, and a third phase involving the construction of the conference center, hotel, and housing (unaffected by the case) is currently underway. The fourth and final phase, which concerns property surrounding the contested parcel, had been on hold pending the Supreme Court decision. With the Supreme Court decision in favor of the city, the final phase of the project should soon materialize.

The total projected State of Connecticut investment in the Fort Trumbull Municipal Development Plan is \$78 million, the City of New London's investment is an additional \$4 million, and federal EDA funding is \$2 million. State and local funds for the wastewater treatment plant project completed in early 2001 totaled \$11.2 million. Private investment within the development is expected to be an additional \$180 million (approximately \$50-60 billion is currently being invested in phase 3 construction).

3. Nissan Motor Company, Canton, Mississippi

Canton, Mississippi was a quiet town 15 miles north of Jackson when Nissan Motor Company selected it as the preferred site of its new \$930 million automobile manufacturing plant in November 2000. The factory has since ignited Mississippi's economy with high paying jobs and a range of new suppliers and retailers that have relocated to Canton.

While takings for public use are traditionally accepted, Mississippi blurred the line in exercising its power of eminent domain to acquire properties for a public use that ultimately benefited a private party. The road projects enabling primary and secondary site access to the Nissan plant created necessary infrastructure in Canton, but could be questioned in future condemnation proceedings.

In June 2000, Nissan Motor Company began quietly shopping for a site for a new automobile manufacturing plant, anonymously contacting the Mississippi Development Authority (MDA) about possible sites. In early August, officials from the company revealed their identity to the MDA and acknowledged that Mississippi was in competition with six other Southeastern states for the new plant. With its eye on the prize, Mississippi quickly mobilized to design an incentive package more attractive than those of its competitors.

Mississippi had good reason to be aggressive in courting Nissan. In 1993, Alabama landed the first-ever Mercedes-Benz factory to be built in the United States with a \$253 million incentive package. Over a decade later, the state is home to 162 different automotive manufacturing plants, over 30,000 automotive manufacturing employees, 35.4 million square feet of plant floor space, and a total employment base (counting direct and indirect jobs) of over 83,000.⁸

With the promise of a \$930 million plant in Canton, Mississippi, employing over 4,000 workers (not to mention thousands more by suppliers and related businesses) at more than double the state's current per capita income, Mississippi officials saw its chance to mirror Alabama's success. They estimated Nissan's economic impact would likely stretch to Mississippi's Gulf Coast, where state ports could handle parts export and import.⁹ The \$295 million incentive package offered to the company included assistance with hiring and training workers, helping with site preparation (including water and sewer improvements), and building a highway giving the site access to Interstate 55.

The project began taking on momentum. In early November 2000, the MDA began acquiring over 1,400 needed acres for the 2.5 million square foot plant. The following month, the Madison County Board of Supervisors approved \$23.5 million in bonds to build bridges and roads around the plant. Nissan began accepting applications for jobs

⁸ Starner, Ron. *Gov. Musgrove: Mississippi Won't Stop With Nissan*. The Site Selection Online Insider. May 26, 2003.

⁹ Lyne, Jack. *Nissan Driving \$950 Million, 4,000 Employee Plant to Mississippi Delta*. The Site Selection Online Insider. Nov. 13, 2000.

and held a four-day supplier conference at which minority business owners were encouraged to find ways of supplying the plant. In July, the company named its first seven major suppliers, including two local minority-owned companies.

By August 2001, the state had negotiated successfully with 62 landowners, leaving only five remaining parcels consisting of 34 total acres to be acquired in the main “core” site. An additional 347 acres were being sought for an engineering school, detention pond, cloverleaf highway exchange, and supplier sites.¹⁰ Through two eminent domain proceedings dealing with the core site, the state was able to acquire properties needed for highway right-of-ways. In the case of the 347 acres, an out-of-court settlement provided for the state to acquire the necessary land for a highway right-of-way and further provided that the state would have title to 43 acres on which to construct the MSU Center for Advanced Vehicular Systems. The state also agreed to run water and sewer to the site. The total settlement price included the price of the land, legal fees, and certain other considerations.

The project forged ahead, with Nissan announcing a second round of major plant suppliers in November 2001, projecting the six companies would bring in about 1,000 jobs and \$110 million in investment to the state. By May 2002, workers at the Mississippi State Port at Gulfport began unloading the first shipments bound for the Nissan plant. This was followed by a vote by the Mississippi State Legislature to give Nissan \$68 million to expand the plant, adding 1,300 jobs to the 4,000 already planned.

On May 27, 2003, production at the plant officially began. Since then, Nissan has not only brought the promised jobs to Canton; it has also invested in the community itself. Its financial contributions thus far include \$100,000 to Boys and Girls Clubs, four full scholarships to area high school seniors, and a pledge of \$150,000 (over five years) to a consortium of Mississippi colleges. Nissan employees volunteer as part of Junior Achievement at Canton High School and last year conducted a toy drive, presenting the Marine Corps-sponsored Santa's Toy Chest with three vehicles filled with toys. In February 2005, Nissan made a payment in lieu of taxes of approximately \$1.5 million to the Canton School District.¹¹

A June 2002 study by the Hattiesburg-based Goodman Group showed Mississippi should recoup the \$295 million incentive package by 2007. The report estimated that for every one of the 5,300 jobs created directly by Nissan, another five or so will spring up. Most of those jobs will come through suppliers; thousands of others will come in the retail sector, for a total of 31,683 jobs by 2010. That same year incomes from these jobs will top \$903 million. By 2025, property and personal income taxes should reach nearly \$700 million and the state will see \$1.1 billion.¹²

¹⁰ Burns, J.C. *Let's Not Lose Sight of Large Picture: Project Helps Miss.* The Clarion-Ledger. Aug. 26, 2001.

¹¹ Weber, Lucy. *Payment less than Expected.* Madison County Herald. Feb. 5, 2005.

¹² Mitchell, Jerry. *Nissan Impact on Miss. Will Be Gigantic.* The Clarion-Ledger. May 26, 2003.

Jobs Created by Nissan and First-Tier Suppliers*

Company	Current (as of May 2003)	Full Capacity (by end of 2004)
Nissan	1,956	5,300
Calsonic/Kansei, Canton	18	100
Calsonic/Kansei, Vicksburg	50	233
Tower Automotive	65	200
Systems Electrocoating	14	41
Tire & Wheel Assembly	25	33
IMS Altrans	61	227
Lexron/Visteon, LLC	70	174
Johnson Controls	150	400
Yorozu Automotive	53	160
Distribution/Auto Service	36	250
M-Tek Ms. Inc.	127	250
Unipres SE USA, Inc.	56	113
Totals	2,681	7,481

*Tier 1 suppliers provide products (such as windshields) that are affixed to a vehicle on the assembly line.
Source: The Clarion-Ledger (May 26, 2003)

4. Target, Topeka, Kansas

In March 2002, Shawnee County, Kansas exercised its power of eminent domain to acquire the last few remaining parcels of a 432-acre site intended in part for a new Target Corporation distribution center. Although two property owners fought the condemnation proceedings primarily on the grounds that the distribution center did not satisfy a “public use,” the Kansas Supreme Court ultimately ruled that the taking of private property for industrial and economic development was in fact a valid public purpose. The \$80 million, 1.3 million square-foot warehouse distribution center opened in June 2004 to the tune of over 600 new jobs, with the expectation of adding an additional 400 jobs within the next three years.

The City of Topeka and Shawnee County were thinking about economic development long before the Target Corporation ever came into the picture. In November 2000, after the voters of Shawnee County approved a quarter-cent sales tax to be used for economic development purposes, GO Topeka, the economic development arm of the Topeka Chamber of Commerce, began searching for the best location for a new business-commerce park. After engaging the services of several groups with economic development expertise to review the availability and suitability of potential sites, the team selected the 432-acre site at S.W. 57th and US-75 highway as the natural choice. In its favor was substantial existing infrastructure, including interchange proximity, a new four land divided highway, and a 27-inch interceptor sewer and water line.

As GO Topeka was concluding its analysis of the site in November 2001, the Target project appeared on the horizon. The company was quietly (and anonymously) searching for a location for a new distribution center, a clearinghouse where wholesale merchandise would be delivered and then distributed to its regional stores. Through an intermediary (Minneapolis-based property management firm, Ryan Companies), Target approached Kansas communities with the project’s parameters: a 2,000 x 2,600 feet site with less than a 3% grade, all under control of one owner.¹³ Based upon the team’s earlier findings at the S.W. 57th and US-75 highway site, GO Topeka proceeded to take options on the property.

By February 2002, GO Topeka had optioned nine of 12 parcels of real property on the site, with three remaining parcels containing approximately 4.8 acres needed to complete the project. Two of the holdouts, General Building Contractors, L.L.C. (GBC) and Robert D. Tolbert (a member/owner of GBC) held a total of 3.8 acres, while Valyer Enterprises, L.L.C. held 0.96 acres. GBC and Tolbert had purchased their property in a December 2000 auction for \$12,000, and then (in October 2001) constructed a building appraised at \$180,000. When GO Topeka approached GBC and Tolbert to acquire options for the property, the owners requested \$540,000 plus an alternative nearby site, with all infrastructure in place and paid for by GO Topeka (approximately another \$100,000 in value). The property was appraised at \$329,000 (\$269,000 – GBC; \$60,000 – Tolbert), a

¹³ “Right on Target”, *The Topeka Capita-Journal*, Sept. 23, 2002.

return of \$137,000 (a 71% return on GBC’s investment of \$192,000 over the course of a year). Caught in a bind and anxious to acquire the properties in time for the Target negotiations, GO Topeka approached Shawnee County in March 2002 to initiate eminent domain proceedings.

Valyer Enterprises agreed to sell its 0.96 acres immediately after the petition for eminent domain was filed. GBC and Tolbert fought Shawnee County all the way to the Supreme Court of Kansas, arguing that the taking of private property for industrial or economic development was not a valid public purpose. GO Topeka prevailed, presenting the recommendations of economic development experts: that the county was in need of employers who could import new dollars and employment and provide a new demand for service, and that the GBC property was located where foundations of a new building could be expected and major employers would require control of adjoining property. They testified that the types of public benefits created by the kind of industrial park envisioned included “thousands of jobs, increased payroll, increased standard of living, opportunities for many people in the community, plus [a] greatly enhanced tax [base].”¹⁴ The Court ruled in favor of Shawnee County, and the contested property was ultimately acquired at the appraised price (\$329,000).

Thanks in part to revenues collected from the quarter-cent economic development sales tax, GO Topeka was able to put together an \$18 million incentive package, including the 143 acres needed for the distribution center (valued at ~\$1.5 million) and a new road in the area (valued at \$1.5 million). Shawnee County also offered to consider tax exemption for the property for a 10-year period (in addition to incentives offered by the state).¹⁵

In return for the \$18-million incentive package, Target signed a 15-year agreement in which it promised to maintain 650 jobs for 10 years. For each year that the company falls below the 650-job threshold, it must pay Shawnee County \$4,000 per job. The contracts also spelled out penalties if Target closes the center in the 11th to 15th years covered in the agreement. If the center closes after 11 years, for example, the company must pay Topeka and Shawnee County \$3 million. The penalty for closing drops by \$600,000 in each year over the next four years.¹⁶



Not long after the final court decision was handed down, Target announced that Topeka would be the home of its new regional distribution center, beating out rival cities Wichita and Olathe. A representative of Ryan Companies (the intermediary working on Target’s behalf), said Topeka was just right for the distribution center. “We had a very good piece

¹⁴ General Building Contractors, LLC v. Board of Shawnee County Commissioners

¹⁵ “Right on Target”, *The Topeka Capita-Journal*, Sept. 23, 2002.

¹⁶ Jack Lyne, “Target Does Topeka: \$80M, 650-Job Distribution Center Clicks Heels in Kansas”, *The Site Selection Online Insider*, Aug. 12, 2002.

of land to work with. The infrastructure was right at the property limits. Very little improvements were needed to the site. We had a great local government that was ready to work with us, too. We felt they had the discipline and abilities to move this project forward and get it completed.”¹

Servicing 45 stores in six states, the \$80 million, 1.3 million square-foot warehouse distribution center opened in June 2004, hiring 600 employees with the expectation of adding an additional 400 jobs within the next three years. Target is drawing new development to the area, attracting businesses eager to take advantage of the traffic that circulates near the area. GO Topeka continues to aggressively plan for the development of the remaining land in what is now known as Center Point Commerce Park, trying to create an aesthetically pleasing, but still prosperous and dynamic, business-commerce park.

5. Best Buy, Richfield, Minnesota

Seven acres in Minnesota became embattled ground in the City of Richfield's efforts to acquire property for Best Buy's new \$160 million headquarters. The dispute between Walser Automotive Group and Richfield tested the limits of the municipality's authority to establish a tax increment financing (TIF) district for economic redevelopment purposes.

In 1993, Best Buy's corporate headquarters settled in Eden Prairie, Minnesota, employing about 500 workers. With the success of its electronics superstores, the company expanded, leasing space in Bloomington, Edina, Hopkins, and Minnetonka. The extensive commuting was siphoning valuable work time from employees; in one instance, a financial services manager estimated that his group of 35 auditors was logging about 500 hours of idle time per year, the equivalent of one worker off the job for nearly 13 weeks.¹⁷ Looking to centralize its 7,500 employees, the company began searching for a new location that could accommodate its headquarters complex. Hoping to find a centrally located site convenient to mass transit, Best Buy was lured to Richfield.

The Richfield Housing and Redevelopment Authority (HRA) had already established a 43-acre tax increment financing (TIF) district in June 1999 at "Interchange West," an area near Interstate Highway 494 and Penn Avenue South. Local officials were eager to see the property put to good use; previous plans for a multiuse development had fallen through after the developer was unable to sign commercial tenants. In addition, the city wanted to encourage higher densities to compensate for the loss of tax-generating property to (Minneapolis-St. Paul) airport expansion on its eastern border.

The TIF district was a major incentive in luring Best Buy to the site. In November 2000, the company pledged \$48.1 million to buy and clear houses and businesses and to help rebuild a freeway bridge near the site. In an agreement with the city, Richfield would repay Best Buy the \$48.1 million, plus 8% interest, from the higher property taxes the redevelopment was expected to generate over 25 years.¹⁸ City officials lauded the project, noting that without TIF, Best Buy's only alternative would be to look at undeveloped farmland on fringes of the Twin Cities area, where land and development often cost less.¹⁹

In March 2001, Best Buy began notifying home and business owners in the Richfield Interchange West redevelopment area that the company would move forward on the purchase of their properties, hoping to commence groundbreaking in the summer. With the help of developer Opus Northwest, Best Buy gradually began the process of acquiring 83 properties on the site through negotiation (a mix of single-family homes, apartment buildings, and businesses). The process was facilitated by the fact that many residents felt the neighborhood had been deteriorating because homeowners had been unwilling to

¹⁷ Carlson, Scott. *Best Buy Employees Begin Exodus to New Headquarters in Richfield, Minn.* Saint Paul Pioneer Press. March 9, 2003.

¹⁸ Wascoe, Dan. *Updated Best Buy Plan Moves Ahead.* Minneapolis Star Tribune. Nov. 28, 2000.

¹⁹ Bergin, Jim. *Suit Challenges Richfield Plan.* Minneapolis Star Tribune. Nov. 19, 2000.

make repairs in the face of proposed development. However, it met a stumbling block when it approached Walser Automotive Group, which owned two car dealerships totaling seven-acres. Opus Northwest retained experts to appraise the property and offer fair market value and relocation costs. In August 2000, when Walser refused the developer's offer of \$10 million (about half of what it was seeking), the city initiated condemnation proceedings.

In response, Walser imperiled the project by filing a suit of its own, claiming the city had illegally established the TIF district in the first place. Minnesota TIF law requires that over 50% of properties must be found "structurally substandard" for an area to be eligible as a TIF district; in addition, the redevelopment must satisfy a public use. The city had concluded that 91% of the property was structurally substandard, but Walser took issue with the city's evaluation methods. The usual evaluation, called "code deficiency," was used to identify only those items that needed immediate repair or replacement and compare it to the cost of redevelopment. The city also used another evaluation tactic, rating the condition of parts of each building – roofs, for example – and calculating replacement costs based on their expected remaining life.²⁰ Walser claimed the combination of the two methods enabled the city to find the majority of properties substandard. In addition, Walser contended that the city had only evaluated 20% of the properties in the proposed district, and failed to follow a legal requirement to use its "best efforts" to contact property owners to inspect their homes and businesses. Finally, Walser asserted that the project did not primarily serve a public purpose in that the public would not benefit from the increased property taxes for 25 years.

The case, *Walser Auto Sales v. City of Richfield*, went before the Minnesota Court of Appeals and the Minnesota Supreme Court. The court found that the city had not properly established the TIF district because it had not adequately proved the existence of "blighted" property. It did conclude that the project served a public purpose, but made clear that if it had found otherwise, the city could have been forced to return the property to Walser, even after the property had been conveyed to Best Buy and construction had already begun.²¹ As part of a March 2003 court ordered mediation, Best Buy and the City of Richfield (funded by the League of Minnesota Cities insurance trust) agreed to pay Walser an additional \$8.7 million and \$300,000, respectively, on top of the \$9.45 million paid in the initial taking.

Best Buy officially relocated to its 1.5 million square-foot campus on March 31, 2003. Before the Best Buy development, the site generated approximately \$700,000 in annual property taxes; in 2005 the property tax revenue was \$3.2 million. Nonetheless, the case brings up new considerations for city redevelopment officials as to the use of TIF as an economic redevelopment tool in eminent domain proceedings. It also has the potential to present cities with significant challenges in revitalizing older neighborhoods.

²⁰ Bergin, Jim. *Suit Challenges Richfield Plan*. Minneapolis Star Tribune. Nov. 19, 2000.

²¹ *Development and Redevelopment Litigation: Risk Management Lessons Learned*. League of Minnesota Cities

6. *Belmar, Lakewood, Colorado*

The City of Lakewood was a Denver suburb with little sense of place when the Lakewood Reinvestment Authority and developer Continuum Partners, LLC decided to redevelop a failing shopping mall into a mixed-use town center. The result was Belmar, 22 city blocks of stores, entertainment, office space, and residences, that has emerged as the symbolic heart of the community.

Built on the site of the former 103-acre estate of Denver heiress May Bonfils, Villa Italia Mall enjoyed over 30 years as the commercial and social center of the City of Lakewood, Colorado. Developed by Gerri Von Frellick and opened in 1966, Villa Italia held the distinction of being the largest indoor shopping mall between Chicago and the West Coast with 1.4 million square feet of gross leasable area. In fact, the surrounding smattering of houses west of Denver first incorporated into the City of Lakewood in 1969 partly to prevent Denver from annexing the mall's sales tax revenue.²²

However, like similar malls of its size and generation, Villa Italia began declining in the early 1990s, losing retail sales to upstart stores and providing fewer tax revenues to the city.²³ At its peak in 1993, the mall's anchor stores generated about \$200 per square foot in gross sales, whereas a neighboring shopping center, Cherry Creek, opened in 1990 scoring sales per square foot in the \$400 range.²⁴ In 1994, the mall produced \$3.2 million in sales tax for the city; by 2000, it was generating just \$2 million. One by one, Villa Italia's anchor stores closed: Dillard's in 2000, then J.C. Penney and Montgomery Ward in 2001.

After a nostalgia-driven attempt to revive the failing mall puttered out, Lakewood City officials decided to intervene. Over the course of a year, the city underwent an extensive public process, establishing a citizens advisory committee and inviting members of the community to comment on potential redevelopment options. Initially, committee members favored only one-story retail establishments. However, that mindset changed after the city distributed disposable cameras and asked members to take pictures of places where they would want to shop and congregate. A far cry from their original preference, they came back with photos of downtown Boulder and Denver's "LoDo" (Lower Downtown) – three-four story, mixed-use, pedestrian-friendly developments with a clear "sense of place."

The city then engaged a developer known for its ability in creating such places: Denver-based Continuum Partners, LLC. Continuum proposed a town center covering 22 city blocks, comprising 175 stores (45 to start), 1,300 residential units, a 16-screen cineplex, a grocery store, 900,000 square feet of Class A office space, nine acres of open space, and 9,000 parking spaces (free garage and surface). The total cost of the development was projected at \$750 million.

²² Brick, Michael. *Trying to Turn Old Shopping Malls Inside Out*. The New York Times. July 3, 2002.

²³ Couch, Mark P. *Lakewood, Colorado, Mall Demolition to Begin*. The Denver Post. Jan. 11, 2002.

²⁴ Hochstein, Peter and Morris Newman. *The ART of Demalling - Shopping Center in Lakewood, Colorado, Reincarnated*. Retail Traffic. May 1, 2003.

Continuum began acquiring the land and mall buildings in 1999, but met an impasse when attempting to renegotiate a lease with Foley's department store, a subsidiary of May Department Stores Co. Under its current lease, Foley's paid rent of about 50 cents per square foot, well below the necessary amount to support the redevelopment. Although Continuum hoped Foley's would remain a long-term tenant in the redeveloped space, nine months of failed negotiations led it to request that City of Lakewood initiate eminent domain proceedings to acquire the property. As required by Colorado statute, the requisite conditions of blight were found and determined by the Lakewood City Council. Although May Department Stores, Co. fought the proceedings in federal court, Continuum and the Lakewood Reinvestment Authority ultimately prevailed. A handful of other retailers - Bally's Athletic Club, World Savings Bank, Wells Fargo Bank and Target, which had never opened on site but was in possession of a former Montgomery Ward space acquired through bankruptcy - also resisted and went through the condemnation process before relinquishing their leases.

The first phase of Belmar, comprising two parking garages, 600,000 square feet of retail, 200,000 square feet of office space, 154 row houses, and 100 apartments, opened in May 2004. The \$250 million cost was funded through a \$140 million construction loan from a six-bank consortium, including Wells Fargo, and \$57 million in special district bonds; the remainder consisted of equity from the developer. The city anticipates sales tax revenues totaling \$100 million over the next 20 years. The second phase will open in the fall of 2005, with ultimate office build-out likely to come sometime in 2007.²⁵

Continuum's efforts to create an environmentally friendly, vibrant city center required a different level of commitment than what is typically found in a mixed-used development. Building facades, which change in an irregular rhythm to enliven the street, are made of a combination of brick, pre-cast concrete, glass, and steel. An urban wind farm powers the lighting in one of the parking lots. Seventy percent of the materials from the original site, including mature trees, have been recycled for use in the new development. One of the office buildings will receive the first silver rating for a building of its type by the U.S. Green Building Council energy-efficient LEED criteria. The development will have a 2.1-acre urban-square park and a 1.1-acre plaza that includes a pond/winter skating rink.²⁶

Continuum, the City of Lakewood, and members of the community formed a strong partnership that has created a shared vision for Lakewood's new downtown. The Belmar development will function as the premier urban destination for the Denver Metro west side. Villa Italia's decline created a great opportunity for the City of Lakewood to redefine itself and provide the community with the economic, social, environmental, and cultural benefits of a true "American Downtown Main Street" With Phase I open and construction still underway, Lakewood again has a symbolic heart of the community.

²⁵ Hazel, Debra. *Belmar Helps Revive Center of Lakewood, Co.* International Council of Shopping Centers.

²⁶ *Lakewood's New Downtown Opens May 14.* PR Newswire Association. May 11, 2004.

7. *Urban Retail, San Diego and Los Angeles, California*

The Benefits of Eminent Domain for Inner-City Distressed Communities

Eminent domain can be an essential tool with respect to inner-city revitalization efforts. Since the Supreme Court expanded the notion of “public purpose” in *Berman v. Parker* to include avenues for blight elimination, eminent domain has been used to transform severely distressed neighborhoods into thriving communities. Thanks to inner-city redevelopment projects made possible by eminent domain, retailers are beginning to see enough successful and profitable examples to diminish the fear and skepticism of setting up shop in previously shunned urban areas.

Consider the example of City Heights Urban Retail Village (URV) in San Diego, California. An ethnically diverse community of approximately 80,000 low-to-moderate income residents, City Heights was considered the most blighted and distressed neighborhood in San Diego in the early 1990s. The main commercial corridor was in decline, and a 25,000 square foot supermarket operated by Lucky Stores was the only grocery store in the neighborhood.

The primary purpose of the URV, besides serving the overall retail needs of the community, was specifically to address residents’ desire for better grocery options. In addition, the URV was designated as the final component in a master redevelopment plan that included a new police substation, elementary school, community center, library, and branch of the local community college.

Assembling land for the proposed two-city-block site involved acquiring an eight-acre street right-of-way and 52 individual parcels comprised primarily of two-three story residential buildings with retail on the ground floor. While the right-of-way was vacated at the outset and the majority of properties were acquired through negotiated purchase, the San Diego Redevelopment Agency did have to exercise its eminent domain authority to ultimately complete the necessary land assemblage.

Upon its opening in 2001, the 110,000 square foot, (nearly 100% leased) shopping center included a 67,000 square foot full-service²⁷ supermarket from Lucky Stores (that was later assumed by Albertsons), neighborhood-serving retail (including Blockbuster, a small health care facility, and Washington Mutual), and convenience retail (including a nail salon, McDonald’s, and Subway). Conservatively, the URV has provided over 200 full and part-time jobs. The redevelopment has also encouraged new development; after the

²⁷ The new supermarket offers service departments previously unavailable to residents: seafood department, bakery, floral department, etc.

project opened, a privately sponsored mixed-use project including 385,000 square feet of housing and office space was launched at a site across the street from the center.

An ongoing redevelopment project in South Central Los Angeles has also benefited from the use of eminent domain. The idea for the Slauson Central Shopping Center arose from residents' desire to redevelop a 6.65-acre brownfield²⁸ nestled in the middle of a dense residential area critically underserved by modern retail services. Three relevant parcels contained a 3.7-acre junkyard²⁹, a used-car dealership, and an abandoned railroad easement that had already been donated to a local community development corporation for redevelopment purposes.

The existing area was largely occupied by low-to-moderate income minority residents. While there were a number of existing supermarkets, the facilities were older and smaller (approximately 20,000-25,000 square feet) than the type residents cared to patronize, and as independent operators, provided a level of service that left much to be desired.

The Los Angeles City Council approved the shopping center for South Los Angeles on October 14, 2003. While the city initially attempted to negotiate with the property owners (except for the railroad, which had already donated the easement), talks eventually failed when the owners (particularly the junkyard owner) became difficult to work with and requested unreasonable amounts of money. The Community Redevelopment Agency of Los Angeles stepped in to assemble the land through eminent domain proceedings (and also handled the environmental remediation of the site).

Upon completion, the Slauson Central Shopping Center will be the first retail shopping center in the community in over 20 years (it is also the first of three city-designated brownfield sites to reach a development agreement). The 80,000 square-foot, supermarket-anchored shopping center will include a state-of-the-art 59,000 square-foot Food 4 Less grocery store. In addition, the project will include approximately 11,000 square feet of small shop space, two freestanding commercial pads totaling approximately 8,000 square feet and a community Educational Training Center space of approximately 2,000 square feet. The project will create approximately 150 new, permanent jobs.

Eminent domain has been crucial in encouraging retailers, particularly anchor tenant supermarkets, to locate in the heart of inner cities rather than on the periphery where they have traditionally positioned themselves. A combination of educational efforts and economic development incentives are encouraging the supermarkets that abandoned inner cities in the 1970s to return. Examples of successful redevelopment projects facilitated by eminent domain are proving that there are underserved populations/markets, and that perceived or actual higher costs of doing business in inner cities can be absorbed by sales volume. Economic development programs (tax incentives, subsidized rents, etc.) are

²⁸ Goodyear Industrial Tract

²⁹ Metal scrap & automobile recycling facility

sealing the deal and convincing retailers that they can be profitable in those locations. Without the ability to exercise the power of eminent domain for redevelopment purposes, the public would be unable to support many inner-city retail projects, and those neighborhoods would continue to decline.